

*This Agenda contains a brief general description of each item to be considered. Copies of the Staff reports or other written documentation relating to each item of business referred to on the Agenda are on file in the Office of the City Clerk and are available for public inspection. Any person who has a question concerning any of the agenda items may call the City Manager at (310) 603-0220, ext. 200.*

Procedures for Addressing the Council

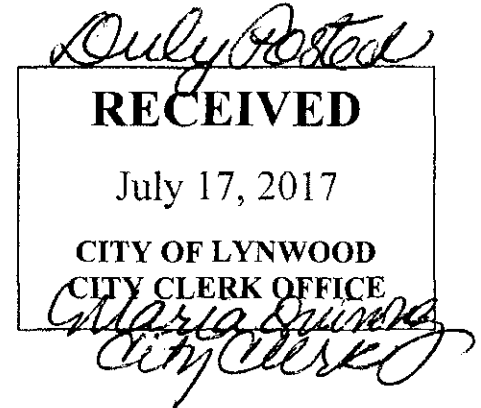
IN ORDER TO EXPEDITE CITY COUNCIL BUSINESS, WE ASK THAT ALL PERSONS WISHING TO ADDRESS THE COUNCIL FILL OUT A FORM PROVIDED AT THE DOOR, AND TO TURN IT IN TO THE CITY CLERK PRIOR TO THE START OF THE MEETING. FAILURE TO FILL OUT SUCH A FORM WILL PROHIBIT YOU FROM ADDRESSING THE COUNCIL IN THE ABSENCE OF THE UNANIMOUS CONSENT OF THE COUNCIL.

**AGENDA**  
ITEMS ON FILE FOR CONSIDERATION  
AT THE SPECIAL MEETING OF  
THE LYNWOOD CITY COUNCIL  
TO BE HELD ON

**JULY 18, 2017**

COUNCIL CHAMBERS

11330 BULLIS ROAD, LYNWOOD, CA 90262  
5:00 P.M.



**MARIA TERESA SANTILLAN-BEAS**  
MAYOR

**JOSE LUIS SOLACHE**  
MAYOR PRO-TEM

**AIDE CASTRO**  
COUNCILMEMBER

**CITY MANAGER**  
ALMA K. MARTINEZ

**CITY CLERK**  
MARIA QUINONEZ

**SALVADOR ALATORRE**  
COUNCILMEMBER

**EDWIN E. HERNANDEZ**  
COUNCILMEMBER

**CITY ATTORNEY**  
NOEL TAPIA

**CITY TREASURER**  
GABRIELA CAMACHO

**OPENING CEREMONIES**

1. CALL TO ORDER
2. CERTIFICATION OF AGENDA POSTING BY CITY CLERK
3. ROLL CALL OF COUNCIL MEMBERS

Salvador Alatorre  
Aide Castro  
Edwin E. Hernandez  
Jose Luis Solache  
Maria T. Santillan-Beas

4. PLEDGE OF ALLEGIANCE
5. INVOCATION

**PUBLIC ORAL COMMUNICATIONS**  
(Regarding Agenda Items Only)

**CITY COUNCIL ORAL AND WRITTEN COMMUNICATION**

MARIA T. SANTILLAN-BEAS, MAYOR  
JOSE LUIS SOLACHE, MAYOR PRO TEM  
SALVADOR ALATORRE, COUNCILMEMBER  
AIDE CASTRO, COUNCILMEMBER  
EDWIN E. HERNANDEZ, COUNCILMEMBER

**CLOSED SESSION**

6. CLOSED SESSION ITEMS

- A. With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9:

Number of Cases: Two

- B. With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.95:

Conference with legal counsel and consideration of possible resolution of worker's compensation claim

Claim No. 14-120907  
Agency Claim Against: City of Lynwood

**CONSENT CALENDAR**

7. TOWING AND STORAGE SERVICES CONTRACT WITH MR. C'S TOWING OF SOUTH GATE, INC.

Comments:

A RFP for towing and vehicle storage services through online media and direct request was completed in March 2017. Businesses that submitted proposals consisted of H.P. Automotive and Tow, Inc., U.S. Tow Inc., Safeway Towing Services, Inc., Mr. C's Towing of South Gate, Inc., and Southside Tow & Recovery.

Among the many requirements listed in the Towing and Vehicle Storage Services RFP, the City emphasized several key elements. These elements are essential to effective and efficient towing services for local law enforcement and the community they serve.

Recommendation:

Staff recommends that the City Council accept the proposal from Mr. C's Towing of South Gate, Inc. with a proposed a \$190 tow fee and a 16% revenue share with the City, and adopt the attached resolution entitled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LYNWOOD AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH MR. C'S TOWING OF SOUTH GATE, INC FOR TOWING AND STORAGE

SERVICES FOR THE PERIOD ENDING JUNE 30, 2020, WITH THE OPTION OF TWO (2) ONE YEAR EXTENSIONS, WITH PERFORMANCE REVIEWS AT THE END OF EVERY OPERATING YEAR.”

## **NEW/OLD BUSINESS**

### **8. COMMERCIAL CANNABIS APPLICATIONS**

Comments:

On December 6, 2016, the City Council waived the full reading and introduced, by title only for the first reading, a proposed ordinance to add Chapter 4 Article 34 to the Lynwood Municipal Code, entitled "Medical Cannabis Business and Activity" ("Cannabis Ordinance").

The Cannabis Ordinance regulates the location and operation of medical cannabis cultivation and manufacturing-related businesses.

Recommendation:

Staff recommends that the City Council select applicants for the operation of commercial cannabis business and direct staff to negotiate developments with each selected applicant. The development agreements will be subject to City Council approval at a duly noticed meeting.

## **ADJOURNMENT**


THE NEXT REGULAR MEETING WILL BE HELD ON AUGUST 15, 2017 AT 6:00 P.M. IN THE COUNCIL CHAMBERS OF THE CITY HALL, 11330 BULLIS ROAD, CITY OF LYNWOOD, CALIFORNIA.




# AGENDA STAFF REPORT

DATE: July 18, 2017

TO: Honorable Mayor and Members of the City Council

APPROVED BY: Alma K. Martinez, City Manager 

PREPARED BY: Jose Ometeotl, Finance Director 

SUBJECT: Towing and Storage Services Contract with Mr. C'S Towing of South Gate, Inc.

## RECOMMENDATION:

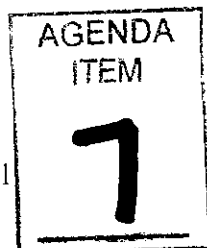
Staff recommends that the City Council accept the proposal from Mr. C's Towing of South Gate, Inc. with a proposed a \$190 tow fee and a 16% revenue share with the City, and adopt the attached resolution entitled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LYNWOOD AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH MR. C'S TOWING OF SOUTH GATE, INC FOR TOWING AND STORAGE SERVICES FOR THE PERIOD ENDING JUNE 30, 2020, WITH THE OPTION OF TWO (2) ONE YEAR EXTENSIONS, WITH PERFORMANCE REVIEWS AT THE END OF EVERY OPERATING YEAR."

## OBJECTIVE:

The City of Lynwood contracts for official towing and vehicle storage services with qualified, reputable towing companies who are willing to enter into a Tow Services Agreement with the City and comply with the City's Towing Policy and Procedures for official tow providers. The last contract maintained continuity in the services provided by the then current tow company H.P. Automotive & Tow, Inc. which expired on June 30, 2017. Requests for proposals (RFPs) were circulated and bids were accepted.

## BACKGROUND:

A RFP for towing and vehicle storage services through online media and direct request was completed in March 2017. Businesses that submitted proposals consisted of H.P. Automotive and Tow, Inc., U.S. Tow Inc., Safeway Towing Services, Inc., Mr. C's Towing of South Gate, Inc., and Southside Tow & Recovery.



Among the many requirements listed in the Towing and Vehicle Storage Services RFP, the City emphasized several key elements. These elements are essential to effective and efficient towing services for local law enforcement and the community they serve.

- Have sufficient towing equipment and vehicles to perform as specified in the agreement.
- Tow service is to be located within five (5) miles of the city limits for community members. City Council reserves the right to waive this requirement.
- Be available on a 24-hour, 7-day-a-week basis, including holidays.
- Storage yard shall be secure and provide outside, as well as inside, locked storage space for vehicles held for evidence.
- Provide fair and competitive prices to customers.
- Prompt and efficient response to tow requests as specified in the agreement.

Five (5) tow service companies submitted proposals for the Towing Service Contract. They were Southside Tow, HP Tow, Safeway Towing, Mr. C's Towing, and US Tow. Staff conducted windshield survey and aerial reviews of the towing facilities identified by each respondent. Staff then communicated with each respondent via email to request clarifications and address the financial terms of the RFP.

At the June 20, 2017 Council Meeting, the City Council evaluated and approved Mr. C's Towing and Safeway Towing to be awarded towing and storage services contracts with the City.

The financial parameters at that time are below.

Vehicle Class	Southside Tow		HP Tow		Safeway Towing		Mr. C's		US Tow	
	Tow	Storage	Tow	Storage	Tow	Storage	Tow	Storage	Tow	Storage
A	\$125	\$50	\$168	\$38	\$185	\$50	\$134	\$35	\$190	\$55
B	\$225	\$60	\$239	\$44	\$185	\$50	\$134	\$35	\$260	\$60
C	\$325	\$60	\$298	\$60	\$295	\$60	\$134	\$35	\$345	\$80
D	\$425	\$60	\$399	\$70	\$350	\$60	\$134	\$35	\$485	\$80

Since that time, staff has negotiated with Mr. C's Towing to increase the towing fee from \$134 to \$190, and also to increase the City share from 14% to 16%.

## **ANALYSIS:**

### **Mr. C's Towing of South Gate, Inc.**

Mr. C's Towing of South Gate, located in the City of South Gate, is one of the five companies that submitted a proposal. They have a storage yard located in the City of South Gate, approximately 2.3 miles from the City. Mr. C's proposed a 14% gross revenue share with the City of Lynwood, provided they are awarded a three year agreement.

Mr. C's Towing of South Gate equipment capabilities not only meet the minimum requirements of the RFP, but exceed it. Mr. C's Towing of South Gate has the following equipment:

- Nine (9) wheel lift/boom trucks (Class A)
- One (1) medium duty (Class B)
- Nine (9) Flatbed Carriers
- One (1) heavy duty tow (Class D)
- One (1) Vehicle Lift (9,000 lbs.)
- Two (2) Forklifts
- One (1) Heavy Duty Trailer (over 33,000 lbs.)

Mr. C's Towing of South Gate provides tow services for the Cities of Bell, La Palma, Los Alamitos, Seal Beach, Signal Hill, Huntington Park and South Gate. They also provide service to the Los Angeles County Sheriff's Department and the California Highway Patrol.

Mr. C's currently provides tow services to numerous communities and submitted several letters of recommendation. Their office and storage yards are located within close proximity to the City, which in turn provides convenience for community members when recovering their vehicles from the tow yard, as well as an efficient response to sheriff department requests for tows. Their tow rates and storage fees are within the industry standard and they are equipped to handle all tow services.

## **FISCAL IMPACT**

There is no fiscal impact to the City. All fees are paid by the owner of the vehicle towed.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LYNWOOD AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH MR. C'S TOWING OF SOUTH GATE, INC FOR TOWING AND STORAGE SERVICES FOR THE PERIOD ENDING JUNE 30, 2020, WITH THE OPTION OF TWO (2) ONE YEAR EXTENSIONS, WITH PERFORMANCE REVIEWS AT THE END OF EVERY OPERATING YEAR**

**WHEREAS**, The City of Lynwood contracts for official towing and vehicle storage services with qualified, reputable towing companies who are willing to enter into a Tow Services Agreement with the City and comply with the City's Towing Policy and Procedures for official tow providers; and

**WHEREAS**, the last contract maintained continuity in the services provided by the then tow company expired on June 30, 2017; and

**WHEREAS**, requests for proposals (RFPs) were circulated and bids were accepted; and

**WHEREAS**, at the June 20, 2017 Council Meeting, the City Council evaluated and approved Mr. C's Towing and Safeway Towing to be awarded towing and storage services contracts with the City; and

**WHEREAS**, Mr. C's Towing agreed to increase the towing fee from \$134 to \$190, and also to increase the City share from 14% to 16%.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNWOOD DOES HEREBY FIND, ORDER, AND RESOLVE AS FOLLOWS:**

**Section 1.** The City of Lynwood City Council awards a contract for towing and storage services to Mr. C's Towing of South Gate, Inc.

**Section 2.** The City Council authorizes the Mayor to execute an agreement with Mr. C's Towing of South Gate, Inc. in a form acceptable to the City Attorney for the period ending June 30, 2020, with the option of two (2) one-year extensions, with performance review at the end of every operating year. Mr. C's proposes a \$190 tow fee and a 16% revenue share with the City.

**PASSED, APPROVED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Maria T. Santillan-Beas  
Mayor

**ATTEST:**

\_\_\_\_\_  
Maria Quinonez  
City Clerk

\_\_\_\_\_  
Alma K. Martinez  
City Manager

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Noel Tapia  
City Attorney

\_\_\_\_\_  
José Ometeotl  
Finance Director



## TOWING AND FRANCHISE AGREEMENT

This agreement ("Agreement") is made as of \_\_\_\_\_ 2017 by and between the **City of Lynwood**, a municipal corporation ("City") and Mr. C's Towing of South Gate, Inc. ("Operator"). City and Operator are sometimes hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

### RECITALS

WHEREAS, City desires to utilize the services of Operator as an independent contractor to provide towing and storage services to City as set forth in the attached **Exhibit A**, which is incorporated herein by this reference; and

WHEREAS, City solicited proposals from qualified vehicle towing companies, which included, but was not limited to, Operator; and

WHEREAS, Operator represents that it is fully qualified to perform such services by virtue of its experience and the training, education, and expertise of its principals and employees; and

WHEREAS, this Agreement applies only to vehicles towed and/or stored, pursuant to Chapter 7-23 of the Lynwood Municipal Code, "City Referral Towing Services.

NOW, THEREFORE, in consideration of performance by the Parties of the covenants and conditions herein contained, the parties hereto agree as follows:

#### 1. **Operator's Services.**

A. Scope of Services. The City hereby designates Operator as one of the two exclusive tow service providers for the City. All services provided by Operator hereunder shall be in accordance with and subject to the provisions of Lynwood Municipal Code ("LMC"), at Chapter 7-23, "City Referral Towing Services," as may be duly amended from time-to-time. The nature and scope of the specific services to be performed by Operator are as described in **Exhibit A** and as further specified in Operator's proposal submitted to the City in response to the City's RFP for towing services ("Operator's Proposal").

B. Time of Performance. Operator shall complete the specific services according to the schedule of performance which is also set forth in **Exhibit A**.

2. **Term of Agreement.** This Agreement shall commence on the above written date (the "Commencement Date") and shall be for a three (3) year period commencing on the effective date, which is the date on which the City's representative executes the Agreement. The "Termination Date" is established for the Agreement by the effective date unless sooner terminated pursuant to the provisions of this Agreement. At the City's sole discretion, prior to the Termination Date, the City has the option to extend this Agreement for one additional one (1) year term ("Amended Termination Date"). The City may again exercise this option at its sole discretion prior to the Amended Termination Date to extend the Agreement to an

additional one (1) year term. In this event the City exercises this option twice, the total term of this Agreement shall not exceed five (5) years.

**3. Rate, Fee, and Charges.**

A. Franchise Fee. Operator shall pay to City, on a monthly basis, an amount equal to Sixteen Percent (16%) of Operator's gross receipts for each City generated tow and impound/storage. An additional Twenty Dollars (\$20) will be provided to the City for each authorized release of a City generated tow and impound/storage when released to the vehicle's legal or registered owner. Operator understands that this Agreement only relates to City referrals, as such term is defined in LMC section 7-23.1. Operator further understands that, unless the Los Angeles County Sheriff's Department requests services from Operator (in which case such tows and impounds/storage services shall be subject to this Agreement), services performed on behalf of the Sheriff's Department may be done by its own tow service company retained by the Sheriff under separate contract. "Gross receipts", as used herein, is defined as all revenues received from towing and related services, storage, salvage sales of abandoned or unclaimed vehicles, plus incidental receipts of any kind earned by Operator as a result of business conducted under this Agreement. All charges shown on invoices and other records are to be explicit in detail, showing the reason for the amount specified therein.

B. Payments to City. Operator shall pay all fees, taxes and sums payable to the City pursuant to this Agreement to the "City of Lynwood." Said payment shall be made on a monthly basis, and within fifteen (15) days from the conclusion of each month. If the deadline falls on a day in which the City is closed for business, the deadline shall be extended to the close of business of the next day immediately following in which the City is open for business.

**4. General Terms and Conditions.** The General Terms and Conditions, as set forth in **Exhibit B**, are incorporated herein by this reference, and are part of this Agreement. In the event of any inconsistency between the General Terms and Conditions and any other exhibit to this Agreement or the Operator's Proposal, the General Terms and Conditions shall control unless it is clear from the context that both parties intend the provisions of the other exhibit(s) to control.

**5. Addresses.**

**City:**

City of Lynwood  
11330 Bullis Road  
Lynwood, CA 90262  
Attn: Alma K. Martinez, City Manager

**Operator:**

Mr. C's Towing of South Gate, Inc.  
4421 Mason Street  
South Gate, CA 90280  
Attn:

**6. Exhibits.** All exhibits referred to in this Agreement are listed here and are incorporated and made part of this Agreement by this reference. Said exhibits include, but are not limited to the following:

**Exhibit A** – Scope of Services and Time of Performance (\_\_\_\_ ( ) pages)

**Exhibit B** – General Terms and Conditions (seven (7) pages)

**SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates written below.

**CITY**

**CITY OF LYNWOOD**

By: \_\_\_\_\_  
Maria T. Santillan-Beas, Mayor

\_\_\_\_\_  
Date

**OPERATOR**

By: \_\_\_\_\_

\_\_\_\_\_  
Date

**ATTEST:**

By: \_\_\_\_\_  
Maria Quinonez, City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Noel Tapia, City Attorney

**EXHIBIT A**  
**SCOPE OF SERVICES AND TIME OF PERFORMANCE**

The Operator shall provide towing and storage services to the City in accordance with Chapter 7-23 of the Lynwood Municipal Code (“LMC”) and this Agreement. Operator shall receive direction from Parking Enforcement Division and Sheriff Personnel and shall respond to all City authorized tows within the time set forth below and provide towing services seven (7) days a week and twenty-four (24) hours per day. Operator shall tow and store vehicles as requested by City or the Los Angeles County Sheriff’s Department (*for purposes of this Agreement, references to City-requested towing and storage services shall also include those instances where the Sheriff’s Department requests Operator to provide such services*), including, but not limited to vehicles impounded for evidence or taken into custody by City. Vehicles involved in accidents or disabled for other causes (when alternative towing is either not appropriate or not requested by the owner or Operator of the vehicle); abandoned vehicles; and, vehicles which are within the jurisdiction of City. Operator shall further be responsible for the removal of debris resulting from accidents and the necessary work preliminary to towing, such as removal of vehicles from ditches, righting said vehicles, separating entangled vehicles, disconnecting drive shafts, and other such work as shall be required in connection with the towing operations.

In providing these services in the field, Operator, including its agents and employees, shall conduct themselves in a safe manner and shall never, in any circumstance, act in a manner that may cause a danger to themselves or those at the scene. In no way shall the Operator, including its agents and employees, be in any relation of dependence upon officers in performing under this Agreement and takes special note that, pursuant to *Minch v. Department of California Highway Patrol* (2006) 140 Cal.App.4th 895, neither the City or Sheriff or their respective employees or officers owe any duty of care to Operator, or its agents and employees.

**A. MAXIMUM TOWING/STORAGE FEES**

1. Maximum Fees. The maximum rates, fees and charges authorized to be imposed by the Operator for towing or storing any vehicles pursuant to the terms of this Agreement shall be as follows:

VEHICLE TYPE	TOWING COST	STORAGE COST
Passenger Cars/Motorcycles	\$190.00 per tow	\$65.00 per day
Trucks and Trailers over one (1) ton	\$190.00 per tow	\$65.00 per day
Heavy Duty Vehicles (Air Brakes)	\$190.00 per tow	\$65.00 per day
Lynwood City owned vehicles	No charge within 15 miles of City limits	No charge within 15 miles of City limits

**B. TOW TRUCK CLASSIFICATIONS.**

1. Operator shall equip, repair, and maintain all tow trucks covered under this

Agreement in accordance with the provisions set forth in the California Vehicle Code; Title 13 of the California Code of Regulations, and consistent with industry standards and practices.

a) Notwithstanding Vehicle Code § 615, all tow trucks shall have recovery capabilities, wheel lift capabilities, and a boom meeting the specifications contained in this Agreement. For the purpose of this Agreement, a trailer for hire that is being used to transport a vehicle shall not qualify as a primary tow truck for rotation tow lists.

b) To the extent Operator has a car carrier, such truck(s) is/are exempted from the recovery, wheel lift, and boom capability requirements.

2. A violation of the Gross Vehicle Weight Rating (GVWR), front axle weight rating, rear axle weight rating, maximum tire weight ratings, not maintaining fifty percent (50%) of the tow truck's unladen weight on the front axle when lifting/carrying a load or safe loading requirements of a tow truck shall be cause for suspension of a truck used in performing under this Agreement, and may be cause for termination of this Agreement.

3. There are four classes of tow trucks covered under this Agreement, as specified below. In no case shall any tow truck be rated less than one-ton capacity. All towing equipment shall further conform to the requirements of LMC section 7-23.7

a) Class A - Light Duty. Class A tow trucks shall have a manufacturer's GVWR of at least 10,000 pounds.

b) Class B - Medium Duty. Class B tow trucks shall have a GVWR of at least 19,501 pounds. The truck shall be capable of providing and maintaining continuous air to the towed vehicle.

c) Class C - Heavy Duty. Class C tow trucks with three axles and a GVWR of at least 33,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle.

d) Class D - Super Heavy Duty. Class D tow trucks with three axles and a GVWR of at least 50,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle.

### C. TOW TRUCK DRIVERS.

1. Operator shall ensure that tow truck drivers ("Drivers") responding to calls initiated by the City are qualified and competent employees of Operator. Operator shall ensure that Drivers are trained and proficient in the use of the tow trucks and related equipment, including, but not limited to, the procedures necessary for the safe towing and recovery of the various types of vehicles providing services under this Agreement, as further specified in Operator's Proposal. Drivers shall be at least 18 years old and possess the following minimum class driver license:

a) Class A tow truck - A valid Class C license, or a valid Class A license with valid medical certificate.

b) Class B tow truck - A valid Class C license for non-regulated vehicles, or a valid Class A license with valid medical certificate for regulated vehicles pursuant

to Vehicle Code Section 34500.

c) Class C and D tow trucks - A valid Class A license with valid medical certificate.

2. The Class A license must be endorsed to allow operation of special vehicle configurations and/or special cargoes, as may required by State law.

3. Operator shall maintain a current list of Drivers.

a) Operator shall provide a current list of its Drivers to the City upon implementation of this Agreement. Operator shall notify the City upon any change in Driver status, including the addition of any new Driver(s), or the deletion of any Driver(s) and revocation or suspension of a driver's license. An updated list shall be provided to the City within seven (7) calendar days of any change in Driver status.

b) Operator shall, at a minimum, maintain the following information for each employee:

1. Full name.
2. Date of Birth.
3. California driver license number and expiration date.
4. Copy of valid medical certificate (if required).
5. Job title/description.
6. Current home address.
7. Current home phone number.
8. Type(s) of truck(s) Driver has been trained and instructed to operate.
9. Certificate showing driver is California Tow Truck Association (CTTA) trained.

4. Drivers must maintain a neat, clean, and professional appearance at all times. Drivers must wear a distinctive uniform with shirttails tucked into the waistband of their pants. Hair, beard, and mustache must be neatly trimmed.

#### D. STORAGE OPERATIONS.

1. OPERATOR RESPONSIBILITIES.

a) Operator shall meet all storage requirements set forth at LMC section 7-23.9 in addition to those set forth herein. Operator shall be responsible for all vehicles stored by Operator, together with all accessories and equipment on each vehicle and all personal property in each vehicle. It shall be Operator's responsibility to protect the stored equipment and property against loss or damage by fire, theft, weather or other causes. In the event of loss or damage to a stored vehicle, its accessories or equipment, or personal property contained in the vehicle, Operator shall be responsible to the owner for all losses or damages. Personal property in vehicles stored by Operator shall not be disposed of to defray any charges for the towing or storing of a vehicle; and, if not called for by the owner within thirty (30) days after date of notice by City of impound or storage, all such property shall be disposed of in accordance with all State, County and Municipal laws, statutes, ordinances and regulations, including without limitation, Vehicle Code § 10652 (reporting storage of

vehicles over thirty (30) days).

b) Operator shall take all reasonable precautions as directed by City to avoid damage to any evidence, such as fingerprints or stains. Vehicles taken into custody that involve evidence shall be stored in a secured, locked area which is inside a structure protected against entry by unauthorized persons. Operator shall park all stored or impounded vehicles in such a manner as to prevent any damage while other vehicles are being moved or parked in the vicinity of said vehicles. Vehicles held for thirty (30) days shall be secured in an inside storage area.

c) Operator must maintain a locked and secured storage area for vehicles held for police investigation or preservation of evidence ("Police Hold Vehicles"). Police Hold Vehicles shall be placed in a secured enclosed, inside storage area ("Inside Storage Area"). The Police Hold Vehicles Inside Storage Area shall be capable of being secured in a manner acceptable by the City Manager or designee, so as to assure the integrity and chain of custody of evidence or other information derived from a vehicle, which is subject to a police hold. Vehicles so stored shall not be moved, relocated, or physically touched by employees of Operator except if authorized by either the City Manager or Sheriff or their designee.

## 2. STORAGE FACILITIES.

a) Operator shall maintain a vehicle storage area to impound towed vehicles large enough to accommodate all vehicles stored less than thirty (30) days. The primary vehicle storage area must have the legal storage capacity for two hundred (200) vehicles.

b) All vehicles impounded or taken into custody by City must be stored by Operator in areas that are enclosed by substantial wire fences or walls that have gates or doors which lock. Such fences or wall enclosures shall be not less than ten (10) feet in height and shall have not less than one (1) gate or door of adequate width and height. A fence or wall enclosures shall be maintained and repaired in good condition throughout the term of this Agreement. Such fences or walls shall be repaired within twenty-four (24) hours of the time of any damage thereto to insure proper protection of the stored vehicles. The storage area must be paved with concrete or asphalt and maintained in good condition. The City Manager or designee, may modify security requirements necessary to coincide with local conditions.

c) The storage facility shall be open and attended from 7:00 a.m. to 7:00 p.m., Monday through Friday, and shall have a responsible person on call on a twenty-four (24) hour basis, seven (7) days a week. The designated on-call person(s) shall be available to release vehicles on a twenty-four (24) hour basis and available within fifteen (15) minutes to answer requests for service at the official towing service garage per LMC section 7-23.9.

## 3. LOCATION AND MAINTENANCE OF STORAGE FACILITY.

a) Operator shall maintain and provide at least one place of business which is also the location of the storage facility for the vehicles stored under this Agreement within the location identified as the Primary Lot in Operator's Proposal at 4421 Mason Street, South Gate, Los Angeles County, which is approximately two (2) miles from the boundaries of City or any facility within a closer distance Contractor

may secure. Contractor will further attempt to place a small tow yard with a full time driver and truck within the City limits for even quicker response.

b) The primary storage facility shall be at the same location as the business address. The vehicle and personal property shall be released at a primary storage facility upon request of the owner. Except with respect to Evidence Hold Vehicles, upon proper identification or proof of authority, the owner or his designated representative shall be permitted to remove personal effects from a stored vehicle without reference to any costs or charges pending because of towing or storage of said vehicle. Evidence Hold Vehicles shall not be released without the presentation of a fully executed property release form issued by the City, and upon compliance with this paragraph and LMC section 7-23.14.

c) Operator shall furnish the City Manager or designee, with the addresses of all storage facilities whenever there is a change.

d) All storage facilities shall comply with all land use and zoning ordinances of the applicable jurisdiction in which they are located and all requirements and specifications described in this Agreement. All landscaped and paved areas of Operator's premises shall be maintained in a neat and orderly condition with the landscape in a healthy condition and free of weeds and litter.

e) Any storage space shall be kept free of weeds, litter, debris, and any other materials or substances or any automotive parts unless said parts are stored as evidence for the Police Department. Operator shall take all reasonable steps to prevent contamination of soil by gasoline, oil, grease, or any other hazardous substances as specified by Federal, State, County or Municipal regulations.

f) Operator shall post not less than one outdoor sign at each storage facility, at or near the entrance thereof, identifying Operator's name, telephone number, and the business telephone number of City.

g) Unless the vehicle is subject to a police hold, as described in Section (D)(1)(c), above, Operator shall be able to properly conduct a lien sale as outlined in Vehicle Code § 22851.1.

#### E. INSPECTIONS.

City or, as authorized by City, the California Highway Patrol ("CHP") may conduct inspections at any time of all tow trucks to determine whether such tow trucks are safe and adequately equipped to perform the service required of such class level tow truck. City or CHP may also conduct inspections at any time of Operator's business premises to determine whether the premises are secured and maintained according to the terms of this Agreement. City or CHP may conduct inspections without notice during normal business hours. Operator shall not dispatch a tow truck (to a City call) that has not been inspected and approved by City or CHP. City or CHP shall inspect a tow truck within thirty (30) days of a request from Operator. If Operator fails an inspection for any reason (as determined in the reasonable discretion of City or CHP) Operator is entitled to only one (1) re-inspection. Failure to pass the re-inspection may be cause for disqualification of the tow truck from use in performing this Agreement.

#### F. BUSINESS RECORDS.



1. Operator shall maintain records, at its place of business, relating to tow services furnished under this Agreement in the manner described in Operator's Proposal and LMC section 7-23.11. At the request of City, Operator shall furnish City a written list of all vehicles that have been towed by Operator under this Agreement. Such list shall show the nature of service, description of vehicles, date of tow, tow truck drivers name, start time, end time, storage location of each vehicle, dates of storage, itemized costs of towing and storage, vehicle make and model, license number and vehicle serial number. Upon request, Operator shall furnish City with an itemized list of all charges incurred. Contractor shall cooperate with the Sheriff in keeping a record log pursuant to LMC section 7-23.13.

2. Operator shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, auctions, FCC and any other necessary licensing (if any), and non-City tows.

3. City may inspect all Operator records without notice during normal business hours. Operator shall permit City to make copies of business records at their place of business, or to remove business records for the purpose of reproduction. City shall provide a receipt for any (original) records removed from the place of business. Records shall be maintained and available for inspection for a period of two years plus the current term of this Agreement. Failure of Operator to comply with the records requirement shall be cause for termination of this Agreement.

4. For purposes of audit by the City, Operator shall also keep accurate records of all gross receipts earned as a result of the business conducted under the Agreement, excepting therefrom all sales and excise taxes. Receipts shall be issued to all customers. The records must be supported by source documents such as receipt slips, cash register tapes, invoices or other pertinent information. Operator shall read and record the totals at the beginning and end of each calendar day. Such records must be available at all times and shall be subject to inspection, review and audit during the entire Agreement period by the City Manager or designee, or City Finance Director or his representative. Such audits may be conducted at the discretion of the City Manager or designee, or the Finance Director, either unannounced or by appointment. Operator's failure to have records of all gross receipts immediately available for audit shall be cause for termination of this Agreement by City. If the results of any audit show an underpayment of the fees due to City under this Agreement of greater than five (5) percent, Operator shall pay the underpayment, plus a penalty of ten (10%) percent per annum, but not exceeding the usury rate, compounded daily from the date the underpayment should have initially been paid to the City. Should the audit show an overpayment to the City, City, at its option, shall either refund such overpayment or credit the amount against the next payment due by Operator to City under this Agreement.

5. Operator shall submit monthly reports in writing and via email of all City tows performed to the City Manager no later than the fifteenth (15<sup>th</sup>) day of the following month. The Operator shall provide all requested correspondence and/or documentation and shall attend staff and City Council meetings as required.

G. CONDUCT AND DEMEANOR.

1. While involved in City requested tow operations, Operator and/or its employees shall refrain from any act(s) of misconduct, to include, but not limited to, any of the following:

- a) Rude or discourteous behavior.
- b) Lack of service, selective service, or refusal to provide service which Operator is/should be capable of performing.
- c) Any act of sexual harassment or sexual impropriety.
- d) Unsafe driving practices.
- e) Exhibiting any objective symptoms of alcohol and/or drug use.
- f) Appearing at the scene of a City tow call with the odor of an alcoholic beverage emitting from his/her breath. Operator/tow truck driver shall submit to a preliminary alcohol-screening test upon demand of City.

2. Operator shall not leave any tow site without cleaning the location sufficient to restore normal traffic patterns.

3. All complaints related to services under this Agreement received by City against Operator (or its employees) will be accepted and investigated in a fair and impartial manner by City with the full cooperation of Operator. Operator will be notified of the results of any investigation before any action is taken.

4. Operator shall cooperate with the Sheriff at accident scenes pursuant to LMC section 7-23.12.

H. COMPLIANCE WITH LAW.

1. Operator, and its employees, shall, at all times, be knowledgeable of, and comply with, all Federal, State, and local laws and ordinances, which include, but are not limited to, those laws which are applicable to Operator as promulgated by the California Department of Transportation, the CHP, and industry practices endorsed by the California Tow Truck Association. Operator shall retain an adequate number of trained and properly licensed (as required by Vehicle Code § 12804) personnel assigned to perform the work described in this Agreement.

a) In the event of a traffic violation of any kind by Operator's tow truck driver(s) which is/are known by City, Operator shall be advised of the violation(s) by City. Except as provided below, Operator will be granted the opportunity to take necessary steps to ensure that the same or similar violation does not reoccur. Any subsequent traffic violation(s) may be cause for termination of this Agreement.

b) Any traffic violation(s) chargeable as a felony, or a traffic violation involving drugs or alcohol (e.g., driving under the influence of drugs or alcohol) or driving on a suspended or revoked license, shall be cause for termination of this Agreement.

2. The provisions contained herein do not preclude City from taking appropriate

enforcement or administrative action for any violations of law.

3. Any conviction of Operator, or any of its agents, employees or officers, involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violence, a drug related offense, felony or misdemeanor driving while under the influence of alcohol and/or a drug, whether or not in connection with the performance of this Agreement or not, shall be cause for termination of this Agreement.

#### I. INVENTORY OF VEHICLE CONTENTS.

A detailed written inventory of all personal property in any vehicle which is towed and stored or towed and impounded will be completed by the City employee requesting Operator's services, and the tow Operator shall complete the appropriate section on the City's form and shall sign said form. A copy of said signed form shall be given to the tow truck driver and shall be retained by Operator. Whenever any item is removed from a stored vehicle and taken to another place of storage, Operator shall provide a receipt, with a copy placed in the stored vehicle and a copy given to the City.

#### J. SERVICE COMPLAINTS.

Operator shall post a notice in a conspicuous place at Operator's place of business of a size which is at least 8 1/2" x 11" informing the public of the right to make complaints regarding service provided by Operator, and shall include the name and location where complaints can be made to City. Operator shall notify City, in writing, within seventy-two (72) hours of any complaints made to Operator regarding the performance of service in connection with towing or storage, or concerning rates, charges of fees, or any claims, or any legal actions filed, delivered or served upon or instituted against Operator or any of its agents, officers or employees.

#### K. ADVERTISING.

Operator shall not display any sign or engage in any advertisement indicating an official or unofficial connection with City or the Department of Motor Vehicles. Examples of prohibited signage include, without limitation, "Official City Tow," "Approved by City," "City Tow." The provisions under this Section shall not preclude the City Manager or designee, from implementing a system to mark and identify particular tow trucks as having passed City inspection.

#### L. RESPONSE TIME

Operator shall respond to any and all calls from the City for towing services within fifteen (15) minutes of such requests twenty four (24) hours at all times including weekends and holidays, in accordance with LMC section 7-23.8

#### M. COMMUNICATION WITH CITY PARKING ENFORCEMENT UNITS

Operator, at no cost to the City, shall install and continuously maintain in working order two-way radios in all of the City's parking enforcement units to allow for instant communication between the City's parking enforcement personnel and Operator's 24-hour dispatch center.

**EXHIBIT B**  
**GENERAL TERMS AND CONDITIONS**

**1. Status as Independent Contractor.**

A. Operator is, and shall at all times remain as to City, a wholly independent contractor. Operator shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Operator or any of Operator's employees, except as set forth in this Agreement. Operator shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City.

B. Operator agrees to pay all required taxes on amounts paid to Operator under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. In the event that City is audited by any Federal or State agency regarding the independent contractor status of Operator and the audit in any way fails to sustain the validity of a wholly independent contractor relationship between City and Operator, then Operator agrees to reimburse City for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

C. Operator shall fully comply with the workers' compensation law regarding Operator and Operator's employees. Operator further agrees to indemnify and hold City harmless from any failure of Operator to comply with applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Operator under this Agreement any amount due to City from Operator as a result of Operator's failure to promptly pay to City any reimbursement or indemnification arising under this Section 1.

**2. Standard of Performance.**

A. Operator shall perform all work to the highest professional standards and in a manner reasonably satisfactory to the City Manager or his/her designee. The City Manager or his/her designee may from time to time assign additional or different tasks or services to Operator, provided such tasks are within the scope of services described in **Exhibit A**. However, no additional or different tasks or services shall be performed by Operator other than those specified in **Exhibit A**, or those so assigned in writing to Operator by the City Manager or his/her designee.

B. The City Manager shall, until further notice to Operator, administer this Agreement and provide for immediate supervision of Operator with respect to the services to be provided hereunder.

### **3. Indemnification.**

A. Operator is skilled in the professional calling necessary to perform the services and duties agreed to be performed under this Agreement, and City is relying upon the skill and knowledge of Operator to perform said services and duties.

B. City and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees") shall have no liability to Operator or any other person for, and Operator shall indemnify, defend, protect and hold harmless Indemnitees from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Indemnitees may suffer or incur or to which Indemnitees may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or other loss occurring as a result of or allegedly caused by the Operator's performance of or failure to perform any services under this Agreement or by the negligent or willful acts or omissions of Operator, its agents, officers, directors, subcontractors, subconsultants or employees, committed in performing any of the services under this Agreement. Notwithstanding the foregoing, the provisions of this subsection shall not apply to Claims occurring as a result of the City's sole negligence or willful acts or omissions.

C. Operator agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section from each and every subcontractor, subconsultant or any other person or entity involved by, for, with or on behalf of Operator in the performance of this Agreement. In the event Operator fails to obtain such indemnity obligations from others as required in this Section, Operator agrees to be fully responsible according to the terms of this Section. Failure of the City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend Indemnitees as set forth herein shall survive the termination of this Agreement and is in addition to any rights which City may have under the law. This indemnity is effective without reference to the existence or applicability of any insurance coverages which may have been required under this Agreement or any additional insured endorsements which may extend to City.

### **4. Insurance.**

A. Without limiting Operator's indemnification of Indemnitees pursuant to Section 3 of this Agreement, Operator shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the types and amounts of insurance as described below:

- (i) Commercial General Liability Insurance using Insurance Services Office Commercial General Liability form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for

claims or suits by one insured against another. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

(ii) Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits shall be no less than \$1,000,000 per accident, combined single limit. If consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described in the preceding subsection. If Operator or Operator's employees will use personal autos in any way on this project, Operator shall provide evidence of personal auto liability coverage for each such person.

(iii) Workers' Compensation insurance on a state approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses.

B. City, its officers, officials, employees and volunteers shall be named as additional insureds on the policy(ies) as to commercial general liability and automotive liability.

C. All insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the state of California with a Best's rating of no less than A:VII.

D. All insurance policies shall provide that the insurance coverage shall not be non-renewed, canceled, reduced, or otherwise modified (except through the addition of additional insureds to the policy) by the insurance carrier without the insurance carrier giving City thirty (30) days' prior written notice thereof. Any such thirty (30) day notice shall be submitted to CITY via certified mail, return receipt requested, addressed to "Risk Manager," City of Lynwood, 11330 Bullis Road, Lynwood, California, 90262. Operator agrees that it will not cancel, reduce or otherwise modify said insurance coverage. The insurer shall waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers.

E. Operator shall submit to City (i) insurance certificates indicating compliance with the minimum worker's compensation insurance requirements above, and (ii) insurance policy endorsements indicating compliance with all other minimum insurance requirements above, not less than one (1) day prior to beginning of performance under this Agreement. Endorsements shall be executed on City's appropriate standard forms entitled "Additional Insured Endorsement".

F. The Operator's insurance shall be primary as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees and volunteers shall be excess of the Operator's insurance and shall not contribute with it.

**5. Confidentiality.** Operator in the course of its duties may have access to confidential data of City, private individuals, or employees of the City. Operator covenants that all data,

documents, discussion, or other information developed or received by Operator or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Operator without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Operator's covenant under this section shall survive the termination of this Agreement.

**6. Ownership of Work Product.** All reports, documents or other written material developed by Operator in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Such material shall not be the subject of a copyright application by Operator.

**7. Conflict of Interest.**

A. Operator covenants that it presently has no interest and shall not acquire any interest, director or indirect, which may be affected by the services to be performed by Operator under this Agreement, or which would conflict in any manner with the performance of its services hereunder. Operator further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Operator shall avoid the appearance of having any interest which would conflict in any manner with the performance of its services pursuant to this Agreement.

B. Operator covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by Operator. Operator's covenant under this section shall survive the termination of this Agreement.

**8. Termination for Cause.** Should Operator fail to perform any of the obligations required of Operator within the time and in the manner provided for under this Agreement within seven (7) days after receipt from City of a written notice of such default, or should Operator violate any of the terms and conditions of the Agreement, City may terminate this Agreement with cause upon thirty (30) days' written notice to Operator. The effective date of termination shall be upon the date specified in the notice of termination. Immediately upon receiving written notice of termination, Operator shall discontinue performing services, preserve the product of the services, and turn over to City the product of the services in accordance with written instruction of City.

**9. Personnel.** Operator represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by Operator or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Operator reserves the right to determine the assignment of its own employees to the performance of Operator's services under this Agreement, but City reserves the right, for good cause, to require Operator to exclude any employee from performing services on City's premises.

**10. Financial Condition.** Prior to entering into this Agreement, Operator has submitted documentation acceptable to the City Manager, establishing that it is financially solvent, such



that it can reasonably be expected to perform the services required by this Agreement. Within thirty (30) days of the first anniversary of the effective date of this Agreement, and each year thereafter throughout the term of this Agreement, Operator shall submit such financial information as may be appropriate to establish to the satisfaction of the City Manager that Operator is in at least as sound a financial position as was the case prior to entering into this Agreement. Financial information submitted to the City Manager shall be returned to Operator after review and shall not be retained by City.

**11. Non-Discrimination and Equal Employment Opportunity.**

A. Operator shall not discriminate as to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation, in the performance of its services and duties pursuant to this Agreement, and will comply with all rules and regulations of City relating thereto. Such nondiscrimination shall include but not be limited to the following: employment, upgrading, demotion, transfers, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. Operator will, in all solicitations or advertisements for employees placed by or on behalf of Operator state either that it is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

C. Operator will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement except contracts or subcontracts for standard commercial supplies or raw materials.

**12. Assignment.** Operator shall not assign or transfer any interest in this Agreement nor the performance of any of Operator's obligations hereunder, without the prior written consent of City, and any attempt by Operator to so assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

**13. Performance Evaluation.** For any Agreement in effect for twelve months or longer, a written annual administrative performance evaluation shall be required within ninety (90) days of the first anniversary of the effective date of this Agreement, and each year thereafter throughout the term of this Agreement. The work product required by this Agreement shall be utilized as the basis for review, and any comments or complaints received by City during the review period, either orally or in writing, shall be considered. City shall meet with Operator prior to preparing the written report. If any noncompliance with the Agreement is found, City may direct Operator to correct the inadequacies, or, in the alternative, may terminate this Agreement as provided herein.

**14. Compliance with Laws.** Operator shall keep itself informed of State, Federal and Local laws, ordinances, codes and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Operator shall at

all times comply with such laws, ordinances, codes and regulations. The City, its officers and employees shall not be liable at law or in equity occasioned by failure of Operator to comply with this Section.

**15. Licenses.** At all times during the term of this Agreement, Operator shall have in full force and effect all licenses (including a City business license) required of it by law for performance of the services hereunder.

**16. Non-Waiver of Terms, Rights and Remedies.** Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Operator constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Operator, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

**17. Attorney's Fees.** In the event that either party to this Agreement shall commence any legal or equitable action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees and costs, including costs of expert witnesses and consultants.

**18. Notices.** Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during Operator's regular business hours or by facsimile before or during Operator's regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore set forth in the Agreement, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

**19. Governing Law.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of California.

**20. Venue.** All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Los Angeles County, California.

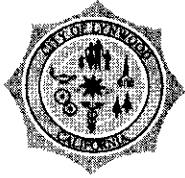
**21. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

**22. Severability.** If any one or more of the sentences, clauses, paragraphs, sections, parts or provisions of this Agreement is found to be invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the Agreement, and the balance of this Agreement shall remain in full force and effect.

**23. Entire Agreement.** This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Operator and City. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the Parties which expressly refers to this Agreement. Amendments on behalf of the City will only be valid if signed by the Mayor and attested by the City Clerk.

**24. Authority.** The person or persons executing this Agreement on behalf of Operator warrants and represents that he/she has the authority to execute this Agreement on behalf of the Operator and has the authority to bind Operator to the performance of its obligations hereunder.

4840-0327-7643, v. 1



# AGENDA STAFF REPORT

DATE: July 18, 2017

TO: Honorable Mayor and Members of the City Council

APPROVED BY: Alma K. Martinez, City Manager

PREPARED BY: H. Francisco Leal, Special Counsel

SUBJECT: Commercial cannabis applications

## **Recommendation:**

Staff recommends that the City Council select applicants for the operation of commercial cannabis business and direct staff to negotiate developments with each selected applicant. The development agreements will be subject to City Council approval at a duly noticed meeting.

## **Background:**

In 1996, the voters of the State of California approved Proposition 215 (codified in Health and Safety Code Section 11362.5 and entitled "The Compassionate Use Act of 1996"). The Compassionate Use Act ("CUA") allows individuals to obtain and use medical marijuana without the threat of criminal prosecution. Under the CUA, "qualified patients" with a physician's prescription for medical cannabis and "primary caregivers" are exempt from prosecution under Health and Safety Code Section 11357 (possession of marijuana) and 11358 (cultivation of marijuana) for specified amounts.

On January 1, 2004, the California State Legislature enacted Senate Bill 420 (the Medical Marijuana Program Act or "MMPA") to clarify the scope of the CUA. MMPA allows cities and other governing bodies to adopt and to enforce rules, regulations, and laws consistent with Senate Bill 420.

The California Supreme Court has made clear that neither the CUA nor the MMPA expressly or impliedly preempt the authority of cities or counties, under their traditional land use and police powers, to allow, restrict, limit or entirely exclude marijuana cultivation or distribution within their jurisdictions. Therefore, cities and counties may adopt local ordinances that regulate the location, operation or establishment of medical marijuana collectives and to enforce such ordinances. Pursuant to the City's police power, the adopted regulations should include consideration of the safety of all residents and businesses, both consumers and non-consumers. The proposed development agreements are



designed to address safety and professional management in the cultivation and manufacturing of any proposed medical cannabis business.

On October 9, 2015, the Governor signed three pieces of state legislation, collectively the Medical Marijuana Regulation and Safety Act (MMRSA): AB 266, AB 243, and SB 643.

- AB 266 establishes a dual licensing structure requiring a state license and a local license or land use permit. The Department of Consumer Affairs will coordinate the overall regulatory structure establishing minimum health and safety and testing standards.
- AB 243 establishes a regulatory and licensing structure for cultivation sites under the Department of Food and Agriculture.
- SB 643 establishes criteria for licensing of medical marijuana businesses, regulates physicians, and recognizes local authority to levy taxes and fees.

In June 2016, the California State Legislature amended MMRSA and retitled it the "Medical Cannabis Regulation and Safety Act" (MCRSA), which provides for the licensure and regulation of medical cannabis and requires all commercial cannabis activity to be conducted between licensees. Upon the date of implementation of regulations by the licensing authority, MCRSA prohibits a person from engaging in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization.

Generally, MCRSA governs the licensing and control of all medical marijuana businesses in the Stat, including granting criminal immunity for licensees. Nonetheless, the legislation protects local control in several ways: (1) requires dual licensing; (2) allows local governments to enforce state law in addition to its own local ordinance (upon request by the local jurisdiction); and (3) maintains civil and criminal penalties for unlicensed activity.

## **Discussion**

On December 6, 2016, the City Council waived the full reading and introduced, by title only for the first reading, a proposed ordinance to add Chapter 4 Article 34 to the Lynwood Municipal Code, entitled "Medical Cannabis Business and Activity" ("Cannabis Ordinance").

The Cannabis Ordinance regulates the location and operation of medical cannabis cultivation and manufacturing-related businesses.

The Cannabis Ordinance provides as follows:

1. Purpose and Intent —generally to regulate all commercial cannabis within the City.
2. Legal Authority and Definitions.
3. Permit Application and Selection Process, including:
  - a. Development Agreement requirement;
  - b. Maximum number of medical marijuana businesses permitted;

- c. Initial application process;
  - d. Permittee selection guidelines;
  - e. Appeal procedure; and
  - f. Permit revocation and abatement.
4. Security measures, including limited access, storage and transportation plan, surveillance cameras and alarm systems.
  5. Operating requirements, including, recordkeeping, limitations on City's liability, City rights of inspection and testing, and restrictions on ownership and location changes.
  6. A limit of five applications can be approved in each of the licensing categories designated under MCRSA.

Staff has received and reviewed more than 40 applications, including 15 cultivation applications, 17 manufacturing applications, at least seven distribution/transportation applications, and two testing applications. Each applicant has submitted the necessary information for background checks, and the results are not available yet. In order not to delay the process unduly, staff desires to present the most qualified applicants to the Council for consideration, contingent on the applicants passing their respective background checks.

Staff's review of the applications, included the following factors:

1. Experience in proposed classification.
2. Proposed location (i.e., zoning, General Plan designation, etc.).
3. Site plans, operations plans, safety and security plans, etc.
4. Viability the of applicant's proposed community benefits plan.

### **The applicants**

Staff recommends that the City Council approve the following applicants as preliminarily qualified to negotiate the terms and conditions of a development agreement. The selection is contingent on each applicant passing the required background check. Staff further recommends that the City Council direct the City Manager and Special Counsel to conduct negotiations with the approved applicants, and present proposed development agreements for City Council consideration.

Cali Med  
 Cannaplex  
 EEL Holdings, LLC  
 General Testing, Inc.  
 GHP Lab  
 JB Los Angeles Farmers  
 Lacturnus Research Associates  
 Lynwood Urban Gardens  
 Lynwood VST

Natural Plant Extracts, LLC  
NMC Organization  
Norton Avenue Ventures  
Premium Produce, LLC  
Pure CA  
RD Lynwood South, LLC

**Fiscal Impact:**

There will be no negative impact to the General Fund.

Coordinated With:

Special Counsel  
City Manager's Office